

JOHN B. CRAIG
HELEN V. CRAIG

IBLA 82-1328

Decided October 18, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring mining claims null and void ab initio. N MC 58476, N MC 58477, N MC 58480, N MC 58481, N MC 58487, N MC 58488, N MC 58497, N MC 58498, N MC 58499, N MC 58507, N MC 58508, N MC 58509.

Affirmed.

1. Mining Claims: Lands Subject to

Where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining laws, 30 U.S.C. § 22 (1976), because the minerals are not owned by the United States. Such a claim is properly declared null and void, regardless of whether or not a claimant performed assessment work or paid taxes on the land.

APPEARANCES: John B. Craig, Helen V. Craig, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John B. Craig and Helen V. Craig appeal the Nevada State Office, Bureau of Land Management (BLM), decision of August 31, 1982, which declared certain unpatented mining claims null and void ab initio insofar as they are situated in the S 1/2 sec. 33, T. 25 N., R. 24 E., Mount Diablo meridian, Washoe County, Nevada, because the mineral estate was reserved to the grantor when the surface estate was reconveyed to the United States in an exchange pursuant to section 8, Taylor Grazing Act, 43 U.S.C. § 315g (1970).

The BLM order of March 6, 1957, opened the land in S 1/2 sec. 33, T. 25 N., R. 24 E., to applications under the nonmineral public land laws, subject to classification as suitable for the purpose sought, but expressly stated the lands were not open to location and entry under the mining laws or lease under the mineral leasing laws because the mineral rights were reserved to the owners.

Appellants advert to a news item in the San Francisco Examiner of January 13, 1982, which indicated that the Supreme Court had "ruled that mineral rights beneath a tract of land left unused for a long period of time, may lapse and automatically pass to the owner of the surface property."

The case referred to was Texaco, Inc. v. Short, 102 S. Ct. 781 (1982). That case dealt only with the constitutionality of the Indiana Dormant Minerals Interests Act, a statute relating only to lands and mineral interests within Indiana. It has no applicability to lands or mineral interests in the State of Nevada.

Land which was patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is patented are null and void ab initio. D. Estremado, 55 IBLA 49 (1981); Ariel C. MacDonald, 52 384 (1981).

[1] Where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining law, 30 U.S.C. § 22 (1976), because the minerals are not property of the United States. Such a mining claim is properly declared null and void regardless of whether the claimant has performed assessment work or paid taxes on the land. All Glory to God Church, 33 IBLA 61 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Melvin J. Mirkin
Administrative Judge
Alternate Member

